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UNITED STATES DEPARTMENT OF AGRICULTURE  
Agricultural Marketing Service  
Washington 25, D. C.

AMS INSTRUCTION No. 448-3

ACTION BY: Division Directors and Staff Officers

### Federal Tort Claims

#### I PURPOSE

This Instruction (1) sets forth the basic provisions of the Federal Tort Claims Act, and (2) prescribes procedures for the handling and payment of tort claims.

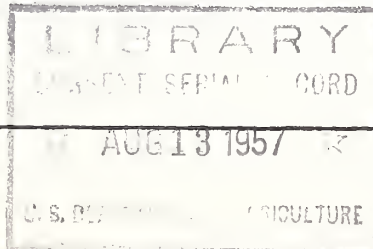
#### II BASIC PROVISIONS OF THE TORT CLAIMS ACT

Under the Federal Tort Claims Act, claimants may proceed against the United States for damages or injuries allegedly caused by an employee of the Department either by filing a claim with the Department or by bringing suit in a Federal District Court.

A Claims. The Department may settle any claim against the United States for not over \$1,000 for personal injury or death or damage to or loss of property caused by the negligent or wrongful act or omission of any employee of the Department while acting within the scope of his employment. Such injury, death, or damage to property must occur under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Acceptance of an award by the claimant is conclusive upon him and releases the Government and the Government employee from all claims by the claimant arising out of the same subject matter.

B Suits. A claimant is not restricted to filing a claim with the Department, but he may file a suit in a Federal District Court under the same circumstances as outlined for claims. However, this suit may not be filed while a claim is pending in the Department for the same subject matter. He may file suit only after his claim is finally determined by the Department or after he has withdrawn his claim upon 15 days' written notice. Once a claim has been filed with the Department, a claimant may not sue for more than the amount claimed from the Department, unless such increased amount is based on newly

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discovered evidence. While the amount of a claim presented to the Department is limited to \$1,000, there is no limit on the amount which may be sued for in court, except that the United States will not be liable for interest prior to judgment or for punitive damages.

C Statutory Limitations. Claims or suits must be filed within two years after accrual. After rejection of a claim by the Department, or upon withdrawal of the claim from the Department, the time within which suit may be instituted by the claimant is extended for a period of six months if the statutory time prescribed would otherwise expire before the end of such period.

III SETTLEMENT OF TORT CLAIMS PRESENTED TO THE DEPARTMENT

The Office of the General Counsel has the authority to receive, consider, ascertain, adjust, determine, and settle claims for \$1,000 or less presented to the Department under the Federal Tort Claims Act. That Office (1) notifies the agency in which the case arose of the determination made; and (2) upon their specific requests, furnishes to claimants whose claims have been denied a summary of the information used and the reasoning followed in reaching a determination. All questions of legal interpretation are considered by the Office of the General Counsel rather than by the agency concerned.

IV ASSISTANCE TO CLAIMANTS

Employees are prohibited under penalty (18 U.S.C. 283) the giving of aid or assistance to claimants other than in the proper discharge of their official duties. The claimant shall not be given an opinion as to what action may be taken on any claim made, nor shall he be encouraged or discouraged in the presentation of a claim. If he specifically states that he wishes to make claim for damage, injury, or death allegedly caused by wrongful act, omission, or negligence of an employee of AMS, the claimant may be informed of his rights under the Federal Tort Claims Act, and the procedures to be followed in filing his claim.

V PROCEDURE FOR HANDLING CLAIMS PRESENTED TO THE DEPARTMENT THROUGH AMS

A Area Administrative (AA) Divisions.

1 When a claimant specifically states that he wishes to file a claim for damage allegedly caused by the Government, the AA

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Division shall:

a Send him SF-95, Claim for Damage or Injury, for execution and return;

b Inform him that:

(1) The claim must be substantiated by evidence and information as required on the reverse of the form, and

(2) Final determination of his claim comes under the jurisdiction of the General Counsel of the Department of Agriculture and that inquiries concerning progress of the claim should be directed to that Office.

2 The AA Division shall date stamp all claims and all documents received in connection with a claim upon their receipt. This is important since, in many instances, claims are made in the form of letters, repair estimates, or other documents prior to filing a formal claim. These documents may constitute a valid claim in writing in the event the formal claim is not submitted within the two-year statutory filing period.

3 The AA Division shall forward the claim (regardless of amount) and supporting documents together with the original copy of the accident docket to the Budget and Finance (BF) Division. The accident docket consists of the forms and other reports prescribed by AMS Instruction No. 371-1, Investigating and Reporting Accidents, and the report of the AA Division's review of the accident (see AMS Instruction No. 371-2, Review of Accidents).

4 The AA Division shall notify the appropriate allottee or work plan supervisor of the amount of the claim (if \$1,000 or less) in order that funds may be reserved.

B BF Division. The BF Division shall forward the claim, supporting documents, and accident docket to the Office of the General Counsel.

## VI PAYMENT OF CLAIMS

A Availability of AMS Funds. The Federal Tort Claims Act provides that any award made in settlement of a tort claim pursuant to the



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Act, and any award made by the Attorney General in arbitrating, compromising, or settling a suit after commencement of action thereon shall be paid by the agency concerned out of appropriations available to such agency. Awards made by the United States District Courts under provisions of the Federal Tort Claims Act are not payable from funds available to AMS. Such payments are made from appropriations for court judgments against the United States.

B Obligation of Funds.

1 Funds may not be obligated until final approval of the claim by the Office of the General Counsel. However, the allottee or work plan supervisor concerned reserves funds for payment (after notification from the AA Division of the amount of the claim) pending a final decision by the Office of the General Counsel.

2 Obligations are made against appropriations available for salaries and other administrative expenses. The fiscal year chargeable is determined by the date on which the Office of the General Counsel approves the claim (or date of compromise by the Attorney General), and not by the date on which the accident occurred.

C Making Payment. Payment of tort claims of \$1,000 or less or those compromised by the Attorney General is accomplished by SF-1145, Voucher for Payment Under Federal Tort Claims Act, as follows:

1 The Office of the General Counsel prepares and approves SF-1145 and sends this form to the BF Division. The BF Division shall forward the original and two copies of SF-1145 to the appropriate AA Division and retain one copy.

2 The AA Division shall:

a Forward the original SF-1145 to the claimant for signature and return;

b Send one copy to the appropriate allottee or work plan supervisor for use in obligating funds;

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c Retain one copy in a pending file;<sup>1/</sup>

d Upon receipt of the signed original SF-1145 from the claimant, schedule the claim for payment in the usual manner; and

e Notify the BF Division when the claim is paid, giving the date of payment.

VII CLAIMS REJECTED BY THE GENERAL COUNSEL

The BF Division, when notified that a claim presented to the Department through AMS has been rejected by the General Counsel, shall so inform the AA Division involved. That Division shall notify the claimant of the decision made.



Henry G. Herrell  
Assistant Administrator for Management

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<sup>1/</sup> If desired, this copy may be used in lieu of a transmittal slip when forwarding the check in payment of the claim to the claimant.

